

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Anderson	Team: Squad #12	CCRB Case #: 202003841	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 05/30/2020 , Saturday, 05/30/2020 , Saturday, 05/30/2020 10:15 PM	Location of Incident: Bedford Avenue and Church Avenue; Bedford Avenue and Tilden Avenue; unknown location in Brooklyn	Precinct: 67	18 Mo. SOL 11/30/2021	EO SOL 5/4/2022	
Date/Time CV Reported Tue, 06/02/2020 11:19 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 06/02/2020 11:19 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. An officer			
3. SGT Duran Mclean	00322	947244	071 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Miguel Vanbrakle	28743	955616	067 PCT
2. POM Louis Scara	26167	965516	070 PCT
3. SGT Michael Cozier	01144	943112	067 PCT
4. POM Hugo Gutierrez	10892	966092	067 PCT
5. POM Brandon Patane	14765	961077	067 PCT
6. POM Trevor Neal	2494	955253	067 PCT
7. POF Christine Roman	18956	959153	067 PCT
8. POM Delio Fernandez	16156	957578	067 PCT
9. POM Ricardo Martinez	19264	950834	067 PCT
10. POF Vanessa Solomondavey	01581	965877	067 PCT
11. POM Denis Gamez	07601	949000	067 PCT
12. CPT Vitaliy Zelikov	00000	936353	070 PCT
13. COD Terence Monahan	00000	876747	CD OFF

Officer(s)	Allegation	Investigator Recommendation
A.SGT Duran Mclean	Force: At an unknown location in Brooklyn, Sergeant Duran Mclean used a chokehold against § 87(2)(b)	
B. Officers	Force: At an unknown location in Brooklyn, officers struck individuals with nightsticks.	
C. Officers	Force: At Bedford Avenue and Church Avenue in Brooklyn, officers struck § 87(2)(b) with a baton.	

Officer(s)	Allegation	Investigator Recommendation
D. Officers	Force: At Bedford Avenue and Church Avenue in Brooklyn, officers used physical force against individuals.	
E. An officer	Force: At Bedford Avenue and Church Avenue in Brooklyn, an officer used pepper spray against § 87(2)(b)	
F. An officer	Force: At Bedford Avenue and Church Avenue in Brooklyn, an officer struck § 87(2)(b) with a baton.	

Case Summary

On June 2, 2020, § 87(2)(b) filed this complaint on the CCRB website on behalf of himself, § 87(2)(b) and unidentified individuals.

On May 30, 2020, § 87(2)(b) and § 87(2)(b) attended a Black Lives Matter protest in Brooklyn, moving to various locations throughout the day; during this period, numerous officers, including Sgt. Duran Mclean of the 71st Precinct, PO Miguel Vanbrakle, Sgt. Michael Cozier of the 67th Precinct, and PO Louis Scara of the 70th Precinct, were present.

At an unknown location and time in Brooklyn, Sgt. Duran McLean of the 71st Precinct struck § 87(2)(b) with a baton in the back of his neck (**Allegation A -Force: Chokehold,** § 87(2)(g) and unidentified officers used physical force using their nightsticks against unidentified individuals (**Allegation B -Force: Nightstick as club,** § 87(2)(g)

§ 87(2)(b) and other protestors subsequently moved to Bedford Avenue and Church Avenue in Brooklyn. There, an unidentified officer struck § 87(2)(b) with a baton (**Allegation C -Force: Physical force,** § 87(2)(g) Unidentified officers used physical force against unidentified individuals (**Allegation D -Force: Physical force,** § 87(2)(g) An unidentified officer used pepper spray against § 87(2)(b) (**Allegation E -Force: Pepper spray,** § 87(2)(g) and an unidentified officer struck him with a baton (**Allegation F -Force: Nightstick as club,** § 87(2)(g)

Video footage related to this incident was obtained from the following sources:

- Footage recorded by an unidentified individual and uploaded to a YouTube account was proactively obtained by the investigation (Board Review 01 through 06);
- Footage recorded by an unidentified individual(s) and uploaded to a Twitter account was proactively obtained by the investigation (Board Review 07 and 08);
- Footage compiled for and uploaded to the Washington Post YouTube account (Board Review 09); and
- Footage recorded by a variety of members of service on Body-Worn Cameras (BWCs) and provided to the CCRB by the NYPD's Legal Bureau (Board Review 10 through 19).

Findings and Recommendations

Allegation (A) Force: At an unknown location in Brooklyn, Sergeant Duran Mclean used a chokehold against § 87(2)(b)

Allegation (B) Force: At an unknown location in Brooklyn, officers struck individuals with nightsticks.

On May 30, 2020, a protest against police brutality occurred in Brooklyn and involved a crowd of at hundreds of protestors. § 87(2)(b) described that the protest involved a speech at Prospect Park during the “organized” portion of the protest, and later a procession south on Bedford Avenue. At numerous points during this march, protestors and officers “lined up” in “tense standoffs.” At unspecified locations, other protestors lit police vehicles on fire.

In his statement to the CCRB (Board Review 20), § 87(2)(b) reported that on May 30, 2020, there was a Black Lives Matters protest that moved through Brooklyn, starting at Prospect Park and moving south on Bedford Avenue. § 87(2)(b) and his girlfriend, § 87(2)(b) proceeded through Brooklyn as part of the protest. Over the course of his movement, § 87(2)(b) frequently interacted, over the course of the day, with multiple officers, including Sgt. Duran Mclean, PO Miguel

Vanbrakle, PO Louis Scara, and Sgt. Michael Cozier. § 87(2)(b) identified these officers by surname, and noted that he read these surnames from their uniforms. At a time and location § 87(2)(b) could not specify, Sgt. Mclean held his straight baton in a horizontal position and pressed it against § 87(2)(b)'s neck. § 87(2)(b) did not report that his breathing was restricted. When this occurred, officers § 87(2)(b) did not describe pushed civilians he did not describe with nightsticks by holding the nightstick horizontally at waist level, with one hand on each end, and moving the center of the nightsticks forward in a “cross-checking” and “punching” motion against civilians’ torsos and centers of gravity.

In her statement to the CCRB (Board Review 21), § 87(2)(b) did not testify that she witnessed this interaction.

Without a time or location associated with this allegation, the investigation was unable to request related video footage or identify this allegation in the footage available.

Sgt. Mclean stated to the CCRB (Board Review 22) that the entirety of this incident was “hours on top of hours” of “mayhem,” which included protestors throwing glass bottles and rocks and lighting fire to garbage cans and marked NYPD vehicles. Within this time, there were also periods of “calm” when protestors did not take such actions. Sgt. Mclean’s understanding of the use of a straight baton during protest activity was that if members of a crowd were “hostile” or “pushing up on” officers, it could be held horizontally, with one hand at each end, and extended away from the body, while issuing a command to the effect of, “Step back.” Sgt. Mclean did not recall using his straight baton in this or any manner, including pressing it against the back of someone’s neck, on the date of this incident. Sgt. Mclean did not see any officer press a baton against the back of someone’s neck during this incident.

§ 87(2)(b), § 87(2)(g)

Allegation (C) Force: At Bedford Avenue and Church Avenue in Brooklyn, officers struck § 87(2)(b) with a baton.

§ 87(2)(b) stated that while moving along Bedford Avenue and prior to her reaching Church Avenue, protestors, including § 87(2)(b) began to run from officers towards Church Avenue. § 87(2)(b) saw a baton that an individual she thought to be an officer held around shoulder level. She was unable to describe this officer, and the investigation was unable to identify this officer. The baton was pushed against § 87(2)(b)'s chest. § 87(2)(b) later saw contusions on her breasts that she thought to be a result of this action. § 87(2)(b) saw the baton being pushed against her but did not see the officer who took this action. § 87(2)(b) felt a push against her back, which she thought to be a baton, and it caused her body to “lurch forward” and her neck to “swing back.” § 87(2)(b) felt another push against the back of her neck, which she thought to be that of a baton. § 87(2)(b) felt multiple additional pushes against her body that she could not attribute to any specific individual.

Personal device video footage recorded by a civilian (Board Review 01), starting at the 02m30s mark, depicts a uniformed officer with chevrons on the uniform sleeve pushing a baton against § 87(2)(b) while moving northbound on Bedford Avenue towards Church Avenue. The investigation determined that this video depicts the force alleged by § 87(2)(b). The officer appears to have a light complexion and cannot be otherwise described based on the footage. Dozens of civilians and officers who can similarly not be identified are in the immediate vicinity of § 87(2)(b). Footage reviewed in this case also included videos attached to CCRB cases 202004474, 202003805, and 202003800.

NYPD documents received in this case, including Roll Call and other documents, did not provide any leads regarding what officers may or may not have been at the incident location at the time of this allegation.

Despite the action depicted in the footage noted above and the investigation's review of all obtained footage relating to this portion of the protest, neither the identity of the sergeant nor officers nearby could be gleaned. Attempts to temporally connect this portion of footage to other available footage to create a nexus that would allow for identification were not successful.

§ 87(2)(b), § 87(2)(g)

Allegation (D) Force: At Bedford Avenue and Church Avenue in Brooklyn, officers used physical force against individuals.

§ 87(2)(b) stated that while he, § 87(2)(b) and other protestors stood in the vicinity of Bedford Avenue and Church Avenue, § 87(2)(b) "called out" to Sgt. Cozier, with whom he had spoken at multiple points throughout the day, including at Bedford Avenue and Tilden Avenue, establishing an "understanding" in that when Sgt. Cozier gave commands to move back, § 87(2)(b) would show his compliance with the command, and Sgt. Cozier did not become "too pushy." Sgt. Cozier asked, "Are you alright?" § 87(2)(b) affirmed this, saying, "Yeah, are you?" Sgt. Cozier said, "Yeah" and pointed to § 87(2)(b) gave a "thumbs up" gesture to Sgt. Cozier.

An "incident" that § 87(2)(b) could not describe further, beyond his thinking that it involved civilians throwing bottles, occurred in the center of the intersection, and officers, who were behind and to the right of § 87(2)(b) in the intersection, were "forming up" and "clearly agitated" about something § 87(2)(b) could not identify. Nobody said anything and § 87(2)(b) did not hear anything that helped him understand why this happened. These officers ran eastbound on Church Avenue towards the civilian crowd. The officers, who faced north and had been "facing off against" the line of civilians in which § 87(2)(b) stood, instructed § 87(2)(b) and others to "move back." § 87(2)(b) could not recall any other instructions these officers gave. § 87(2)(b) thought that officers had given the ultimatum, "Move back or we'll push you," but he could not attribute such a statement to any officer or moment during the entirety of the day.

The line of civilians began to move eastward, was "rolled and turned," and "compressed in on itself" in that the civilians in the west end of the group moved eastward and officers "wedged" or "funneled" the civilians to face westward after they had been facing southward. The civilians,

including § 87(2)(b) moved backwards on Church Avenue, stopped near a brick wall, and faced westwards. Unidentified officers pushed unidentified civilians with nightsticks by holding the nightstick horizontally at waist level, with one hand on each end, and moving the center of the nightsticks forward in a “cross-checking” and “punching” motion against civilians’ torsos and centers of gravity.

Personal device video footage recorded by a civilian (Board Review 02) depicts a crowd of civilians appearing to flee from officers eastbound on Church Avenue in a manner consistent with this allegation, but the footage does not clearly depict any officer’s use of force.

§ 87(2)(b) stated that during this portion of the incident, unidentified officers pushed unidentified civilians in an unspecified manner. § 87(2)(b) was pushed by an unidentified individual, fell to the ground, was told by someone she thought to be an officer, “You need to get out of here,” and was helped to her feet by this individual.

§ 87(2)(b), § 87(2)(g)

Allegation (E) Force: At Bedford Avenue and Church Avenue in Brooklyn, an officer used pepper spray against § 87(2)(b)

§ 87(2)(b) stated that after seeing officers push civilians with their straight batons, § 87(2)(b) moved eastwards, facing officers and thinking that he and others were complying with officer commands. PO Vanbrakle was “very aggressive” in that he squatted downwards in a manner § 87(2)(b) thought to be “psyching himself up to go after people” as if a bull. § 87(2)(b) and § 87(2)(b) looked at each other; § 87(2)(b) told § 87(2)(b) to “watch out for McLean,” and § 87(2)(b) told § 87(2)(b) to “watch out for Vanbrakle.” § 87(2)(b) faced northwards.

§ 87(2)(b) “briefly” saw an unidentified officer, whom he described as an approximately 5’9” to 5’10” tall, “middle-aged” white male with an average build and wearing a white uniform shirt, lifting what § 87(2)(b) thought to be a can of pepper spray. § 87(2)(b) described this object as a black canister approximately one inch in diameter, approximately six inches in height, and having a clear plastic nozzle. § 87(2)(b) turned away from this officer, felt something he thought to be pepper spray on the left side of his neck and jaw, and thought that this officer had discharged pepper spray towards him and other civilians. Prior to this, § 87(2)(b) did not hear any warning about pepper spray possibly being discharged. § 87(2)(b) quickly turned away and did not know whether he saw pepper spray being discharged. Immediately prior to this, § 87(2)(b) heard officers saying, “Move back,” heard himself saying, “We’re moving. We’re complying,” possibly heard individuals screaming, and did not remember hearing anything else.

§ 87(2)(b) stated that she had become separated from § 87(2)(b) prior to this alleged series of events and thus did not witness this interaction.

Chief Monahan stated to the CCRB (Board Review 23) that he did not witness any officers use pepper spray at Bedford Avenue and Church Avenue and did not himself smell or taste any pepper spray.

PO Vanbrakle stated to the CCRB (Board Review 24) that he did not see any supervisors wearing white shirts deploying pepper spray in the vicinity of Bedford Avenue and Church Avenue or

Bedford Avenue and Veronica Avenue. PO Vanbrakle and other officers accounted for their use of pepper spray in the vicinity of this incident location in a series of events separate from the context of this alleged use of pepper spray. These allegations were addressed in CCRB case 202003805.

Both BWC footage (Board Review 10 through 19) and personal device footage recorded by civilians (Board Review 01 through 08) depict, at a variety of times, numerous unidentified and uniformed members of service wearing white uniform shirts in the vicinity of Bedford Avenue towards Church Avenue. Footage review also included videos attached to CCRB cases 202004474, 202003805, and 202003800.

While review of the BWC footage in this incident depicted officer use of pepper spray, as noted above, this was assessed in CCRB case 202003805; the footage did not appear to depict any use of pepper spray apparently associated with this allegation, including any member of service of rank lieutenant or above appearing to deploy pepper spray. Furthermore, while the footage attached to this case appears to depict events near the time of this allegation, numerous officers fitting § 87(2)(b)'s general description of the subject officer are visible and unidentifiable in the footage.

§ 87(2)(b), § 87(2)(g)

Allegation (F) Force: At Bedford Avenue and Church Avenue in Brooklyn, an officer struck § 87(2)(b) with a baton.

§ 87(2)(b) reported that approximately ten to fifteen seconds after feeling the effects of pepper spray, during which time § 87(2)(b) did not recall hearing anything, § 87(2)(b) felt a “shock” on his head on the left side, towards the “middle back” where his hair parted. The strike “came out of nowhere” and caused his glasses to fall off. Prior to this, § 87(2)(b) did not hear any verbal warning. The pain § 87(2)(b) felt was “sharp” and not “intense” but caused him to feel “dazed.” In response, § 87(2)(b) may have said, “I’m moving. I’m complying” but did not know whether he did this. § 87(2)(b) did not say anything “aggressive.” § 87(2)(b) turned to his left, facing northwards. § 87(2)(b) saw an officer, who he had not been facing and who he thought to be PO Vanbrakle due to this officer having been the tallest officer § 87(2)(b) previously saw in the “lineup,” due to this officer’s position in the incident prior to this, and due to this officer having dark hair and dark eyes. § 87(2)(b) raised his left arm in an attempt to “shield” himself such that his hand was near his ear and his arm was in a triangle shape against his body. § 87(2)(b) “intercepted” what he thought to be one to two additional “blows” he thought directed at his upper body or head. He felt an “immediate soreness” in his wrist and upper arm, and these body parts became difficult to move. § 87(2)(b) sustained a laceration on his head and contusions to his left wrist and left triceps, all of which he thought to have come from one or more strikes at this time.

No video footage available in this complaint appears to depict this portion of the incident.

§ 87(2)(b) stated that she had become separated from § 87(2)(b) prior to this alleged series of events and she therefore did not witness this interaction.

PO Vanbrakle stated that at approximately 10:15 p.m., he and other officers were instructed to move the crowd of protestors east towards Nostrand Avenue on Church Avenue. He believed this was to move protestors away from the construction site, where they were acquiring materials to throw at police officers. Officers, including PO Vanbrakle, moved protestors away from the

construction site by walking towards the protesters and giving verbal commands to move back. When officers encountered resistance, they used their polyethylene batons in both hands to push protesters back. They would accompany this with the phrase, "Get back." No supervisory guidance was given on scene regarding baton use. PO Vanbrakle himself issued the verbal command, "Get back." He used his baton in both hands, held horizontally, to push protesters back in the manner in which he was trained in the academy. He used his baton to move people eastward by extending it forward from his chest. He did this several times. He did not recall using it in any other way. PO Vanbrakle did not remember whether he ever swung his baton vertically with one or both hands from above his head down towards civilians. When asked if he saw any other officers do so, he stated that it was dark past the light of the Shell gas station and he could not see much beyond himself and a few other officers next to him.

When presented with personal device video footage recorded by a civilian (Board Review 02), starting at the 00m00s mark, PO Vanbrakle stated that the footage presented to him was consistent with his experience of the incident. PO Vanbrakle recognized Sgt. Cozier and possibly himself in the footage but could not articulate, based on the footage, any actions that he took beyond those he previously described. When presented with BWC footage recorded by Sgt. Cozier (Board Review 10), starting at the 11m38s mark, PO Vanbrakle stated that § 87(2)(b)s and § 87(2)(b)s appearance in the footage were not notable to him, and he was not made aware of them or their roles in this incident through either his own observation or information provided to him by other officers. When presented with a still frame from video footage (Board Review 09) at the 02m10s mark, depicting § 87(2)(b)s head and blood on his neck, PO Vanbrakle stated that he had not seen any such injury on the date of this incident, did not recall interacting with § 87(2)(b) and did not, to his knowledge, take action towards any civilian that may have resulted in the injury depicted.

Chief Monahan stated that at Bedford Avenue and Church Avenue, he did not see any officers swing their batons at civilians or push civilians with their batons, and he did not direct any officers regarding their use of batons on scene.

§ 87(2)(b), § 87(2)(g)
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Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 25).
- § 87(2)(b) has been party to one CCRB complaint and has been named as a victim in three allegations (Board Review 26).
 - § 87(2)(b)
- Sgt. Mclean has been a member of service for thirteen years, and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (Board Review 27).

- According to OCA, § 87(2)(b) has no history of convictions in New York City (Board Review 28).
- As of July 20, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 29).

Squad No.: 12

Investigator: Chris Anderson SI Chris Anderson 09/03/2021
Signature Print Title & Name Date

Squad Leader: Carlmais Johnson IM Carlmais Johnson September 3, 2021
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date